

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



_____)
In the Matter of)
)
)
McWANE, INC.,)
a corporation,)
)
and)
)
STAR PIPE PRODUCTS,)
a limited partnership)
)
)
)
_____)

PUBLIC

Docket No. 9351

**COMPLAINT COUNSEL’S OBJECTIONS AND RESPONSES TO
RESPONDENT McWANE’S FIRST SET OF REQUESTS FOR ADMISSION**

Pursuant to Rule 3.32 of the Federal Trade Commission’s Rules of Practice, Complaint Counsel hereby responds to Respondent McWane Inc.’s First Set of Requests for Admission (“First Requests for Admission”). Complaint Counsel has endeavored to offer a good faith response to the First Requests for Admission, but reserves the right to supplement our responses after the close of discovery, especially insofar as Respondents may produce additional documents and information before the close of discovery, the review of which may alter our responses herein.

Subject to the General and Specific Objections below, Complaint Counsel answers as follows:

GENERAL OBJECTIONS

The following General Objections apply to each request for admission (“Request”) in the First Requests for Admission, and are incorporated by reference into each response. The assertion of the same, similar or additional objections, or partial answers in response to an

individual Request, does not waive any of Complaint Counsel's General Objections as to the other Requests.

1. Complaint Counsel objects to the First Requests for Admission because Respondent McWane, Inc. failed to file a copy of its First Requests for Admission with the Secretary, as required under Rule 3.32(b).

2. Complaint Counsel objects to the First Requests for Admission to the extent the Requests are directed to the Federal Trade Commission rather than to Complaint Counsel.

3. Complaint Counsel objects to the First Requests for Admission to the extent they seek to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings. Complaint Counsel's responses will comply with the Commission's Rules of Practice for Adjudicative Proceedings.

4. Complaint Counsel objects to the First Requests for Admission to the extent the Requests do not separately set forth each matter for which an admission is requested as required under Rule 3.32(a).

5. Complaint Counsel objects to the First Requests for Admission to the extent the Requests, including all separate and distinct subparts, exceed the 50 requests for admission allowed in Paragraph 10 of the February 15, 2012, Scheduling Order.

6. Complaint Counsel objects to the First Requests for Admission as premature to the extent the Requests seek information that relates to expert testimony prior to the dates prescribed by the February 15, 2012, Scheduling Order.

7. Complaint Counsel objects to the First Requests for Admission to the extent the Requests are overly broad, vague, ambiguous, unduly burdensome, oppressive, and are not reasonably calculated to lead to the discovery of admissible evidence.

8. Complaint Counsel objects to the First Requests for Admission to the extent the Requests call for information previously provided to Respondent McWane or for information that may be less onerously obtained through other means.

9. Complaint Counsel objects to the First Requests for Admission to the extent the Requests seek information protected by deliberative process privilege, law enforcement investigative privilege, informant's privilege, or the attorney work product doctrine. Complaint Counsel does not, by any response to any Request, waive or partially waive any applicable privilege or attorney work product claim.

10. Complaint Counsel objects to the First Requests for Admission to the extent the Requests do not relate to statements or opinions of fact, or to the application of law to fact, and thereby exceed the scope of Rule 3.32 governing requests for admission.

11. Complaint Counsel objects to the First Requests for Admission to the extent that any Request that quotes from a document, or references a statement, solicits or implies an admission that the quote or statement is evidence of the truth of the matter asserted.

12. Complaint Counsel reserves all of its evidentiary objections or other objections to the introduction or use of any response herein at the hearing in this action, and does not, by any response to any Request, waive any objection to that Request, stated or unstated.

13. Complaint Counsel does not, by any response to any Request, admit to the validity of any legal or factual contention asserted in the text of any Request.

14. Complaint Counsel's discovery and investigation in this matter are continuing. Complaint Counsel reserves the right to assert additional objections to the First Requests for Admission, and to amend or supplement these objections and responses as necessary.

SPECIFIC OBJECTIONS AND RESPONSES

REQUEST NO. 1: Admit that at all relevant times, Domestic Fittings and Non-domestic Fittings competed against each other in Open Preference jobs including before, during, and after ARRA.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the terms “all relevant times” and “competed against” as vague and ambiguous. Subject to the General and Specific Objections, Complaint Counsel denies this Request, but admits that Domestic Fittings and Non-domestic Fittings have been substitutes for Open Preference jobs before, during, and after the passage of ARRA in 2009.

REQUEST NO. 2: Admit that Domestic Fittings and Non-domestic Fittings are functionally interchangeable.

RESPONSE: Subject to the General Objections, Complaint Counsel admits that Domestic Fittings and Non-domestic Fittings are functionally interchangeable generally, but denies that Domestic Fittings and Non-domestic Fittings can be used interchangeably by consumers for Domestic Preference jobs.

REQUEST NO. 3: Admit that, from at least 2003, the vast majority of requests for proposal and specifications that include DIWF that are issued in the United States are Open Preference.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the term “vast majority” as vague and ambiguous. Subject to the General and Specific Objections, Complaint Counsel denies this Request, but admits that the majority of requests for proposal and specifications that include DIWF in the United States have been Open Preference since at least 2007. Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny the number of Open Preference jobs prior to 2007.

REQUEST NO. 4: Admit that Non-domestic Fittings have accounted for the majority of all sales of DIWF in the United States in the last five years.

RESPONSE: Subject to the General Objections, Complaint Counsel admits that Non-domestic Fittings have accounted for the majority of sales of DIWF in the United States in the last five years.

REQUEST NO. 5: Admit that DIWF customer preferences have shifted away from Domestic Fittings toward Non-domestic Fittings over the last fifteen years.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the terms “customer preferences” and “shifted away” as vague and ambiguous. Subject to the General and Specific Objections, Complaint Counsel, after a reasonable inquiry, lacks sufficient information to admit or deny this Request.

REQUEST NO. 6: Admit that between 2000 and 2007, according to the U.S. ITC, sales of Non-domestic Fittings into the United States have increased by 47.2%.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the term “sales” as vague and ambiguous. Complaint Counsel further objects to this Request as unduly burdensome to the extent it requires Complaint Counsel to research all ITC decisions to determine if the ITC made the finding attributed to it by Respondent. Complaint Counsel also objects to this Request to the extent it seeks Complaint Counsel to admit the truth of the underlying assertion. Subject to the General and Specific Objections, Complaint Counsel, after a reasonable inquiry, lacks sufficient information to admit or deny this Request.

REQUEST NO. 7: Admit that according to discovery obtained by the FTC in its DIWF Investigation, including but not limited to FTC TU-FTC000727 – TU-FTC002034, McWane’s average price for Non-domestic Fittings was lower in 2010 than in 2008.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the term “average price” as vague and ambiguous. Complaint Counsel further objects to this Request as premature to the extent it seeks information relating to issues that may be the subject of expert testimony in this case. Complaint Counsel also objects to this Request inasmuch as the cited document does not list or identify “average prices” for Non-domestic fittings. Subject to the General and Specific Objections, Complaint Counsel, after a reasonable inquiry, lacks sufficient information to admit or deny this Request.

REQUEST NO. 8: Admit that, according to the BLS (Bureau of Labor Statistics) cast iron scrap price series, in the first half of 2008 scrap prices increased by almost 50%, and from the end of 2009 to early 2010 increased by more than 15%.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the term “almost” as vague and ambiguous. Complaint Counsel further objects to this Request for failing to set forth each matter for which an admission is requested separately, as required by Rule 3.32(a), by seeking at least two separate admissions of fact. Complaint Counsel also objects to this Request as unduly burdensome to the extent it requires Complaint Counsel to research and analyze all BLS cast iron scrap price data to determine if they support the findings attributed to the BLS by the Respondent. Complaint Counsel further objects to this Request to the extent it seeks Complaint Counsel to admit the truth of the underlying assertions. Subject to the General and Specific Objections, Complaint Counsel denies this Request, except as follows:

- a) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether the BLS cast iron scrap price series indicates that scrap prices increased by almost 50% in the first half of 2008; and

b) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether the BLS cast iron scrap price series indicates that scrap prices increased by more than 15% from the end of 2009 to early 2010.

REQUEST NO. 9: Admit that McWane’s annual domestic DIWF production in 2009 and 2010 was less than half of Union Foundry’s 40,000-ton capacity, due to lower demand for Domestic Fittings.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the term “due to” as vague and ambiguous. Complaint Counsel further objects to this Request for failing to set forth each matter for which an admission is requested separately, as required by Rule 3.32(a), by seeking at least at least two separate admissions of fact. Subject to the General and Specific Objections, Complaint Counsel denies this Request, except as follows:

a) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether McWane’s annual domestic DIWF production in 2009 and 2010 was less than half of Union Foundry’s capacity or whether Union Foundry’s capacity was 40,000 tons in 2009 and 2010; and

b) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny the reasons for McWane’s annual domestic DIWF production rates in 2009 and 2010.

REQUEST NO. 10: Admit that in its 2003 investigation of imports in the ductile iron waterworks fittings market, the U.S. International Trade Commission (ITC) reached a unanimous affirmative determination finding that “imported and domestic products are interchangeable,” that “the domestic and imported products are substitutable, and most purchasers rated them as comparable in quality,” and that Non-domestic Fittings were “being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products,” and that Domestic Fittings accounted for 20% or less of all DIWF sales in the United States.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to this Request as unduly burdensome because it fails to identify the page number or general

location of the quoted language in the 149-page report identified by Respondent. Complaint Counsel further objects to this Request for failing to set forth each matter for which an admission is requested separately, as required by Rule 3.32(a), by seeking at least five separate admissions of fact. Complaint Counsel also objects to this Request to the extent it seeks Complaint Counsel to admit the truth of the underlying assertions. Subject to the General and Specific Objections, Complaint Counsel denies this Request, except as follows:

a) Complaint Counsel admits that the report from the U.S. International Trade Commission, “Certain Ductile Iron Waterworks Fittings from China,” Investigation No. TA-421-4, Publication 3657, dated December 2003, (“TA-421-4”), states that, “imported and domestic products are interchangeable;”

b) Complaint Counsel admits that TA-421-4 states that, “the domestic and imported products are substitutable and most purchasers rated them as comparable in quality;”

c) Complaint Counsel admits that TA-421-4 states that, “certain DIWF from China are being imported into the United States in such increased quantities or under such conditions as to cause, or threaten to cause market disruption of domestic producers of like or directly competitive products;”

d) Complaint Counsel, after a reasonable inquiry, lacks sufficient information to admit or deny whether TA-421-4 states that Domestic Fittings accounted for 20% or less of all DIWF sales in the United States; and

e) Complaint Counsel admits that TA-421-4 relates to an investigation of Certain Ductile Iron Waterworks Fittings from China, and was a unanimous and affirmative determination.

REQUEST NO. 11: Admit that during 2009 and 2010, annual imports of DIWF were 53,561 and 62,955 tons, respectively, according to public U.S. ITC data, while McWane’s domestic DIWF sales were only 14,957 and 22,343, according to TylerUnion’s Waterworks Fittings Financial Statements.

RESPONSE: In addition to the General Objections, Complaint Counsel further objects to the term “sales” as vague and ambiguous. Complaint Counsel further objects to this Request for failing to set forth each matter for which an admission is requested separately, as required by Rule 3.32(a), by seeking at least two separate admissions of fact. Complaint Counsel also objects to this Request as unduly burdensome to the extent that it requires Complaint Counsel to research all ITC decisions to determine if the ITC made the findings attributed to it by Respondent. Complaint Counsel also objects to this Request to the extent it seeks Complaint Counsel to admit the truth of the underlying assertions. Subject to the General and Specific Objections, Complaint Counsel denies this Request, except as follows:

a) Complaint Counsel, after a reasonable inquiry, lacks sufficient information to admit or deny whether, according to public US ITC data, annual imports of DIWF were 53,561 and 62,955 tons during 2009 and 2010, respectively; and

b) Complaint Counsel, after a reasonable inquiry, lacks sufficient information to admit or deny whether, according to TylerUnion’s Waterworks Fittings Financial Statements, McWane’s domestic DIWF sales were 14,957 and 22,343 tons in 2009 and 2010, respectively.

REQUEST NO. 12: Admit that DIFRA began gathering DIWF shipment tonnage data in the Spring of 2008, first published aggregated DIWF shipment tonnage data for all DIFRA members in June 2008, and that DIFRA issued its last report of aggregated DIWF shipment tonnage data for all DIFRA members in December 2008.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to this Request for failing to set forth each matter for which an admission is requested separately, as

required by Rule 3.32(a), by seeking at least three separate admissions of fact. Subject to the General and Specific Objections, Complaint Counsel denies this Request, except as follows:

- a) Complaint Counsel admits that DIFRA began gathering DIWF shipment tonnage data in the Spring of 2008;
- b) Complaint Counsel admits that DIFRA first published aggregated DIWF shipment tonnage data to DIFRA members in June 2008; and
- c) Complaint Counsel admits that the most recent report issued by DIFRA regarding aggregated DIWF shipment tonnage data to DIFRA members was in December 2008.

REQUEST NO. 13: Admit that DIFRA was briefly operational from mid-2008 through to the end of 2008, was defunct by the beginning of 2009, and that there is no evidence that DIFRA will become operational again or will gather and disseminate DIWF sales or any other volume data at any point in the future.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the terms “briefly,” “operational,” and “defunct” as vague and ambiguous. Complaint Counsel further objects to this Request for failing to set forth each matter for which an admission is requested separately, as required by Rule 3.32(a), by seeking at least three separate admissions of fact. Subject to the General and Specific Objections, Complaint Counsel denies this Request, except as follows:

- a) Complaint Counsel admits that DIFRA existed for the period of mid-2008 through to the end of 2008, but denies that this was the only time period of its existence;
- b) Complaint Counsel denies that DIFRA ceased to exist as a corporation by the beginning of 2009; and

c) Complaint Counsel denies that there is no evidence that DIFRA will become operational again or will gather and disseminate DIWF sales or any other volume data at any point in the future.

REQUEST NO. 14: Admit that DIFRA and its members were counseled by antitrust lawyers regarding compliance with the antitrust laws and that antitrust counsel attended and oversaw all communications and meetings of the DIFRA members and that a third-party accounting firm, SHRW, gathered, aggregated, and disseminated only DIWF shipment tonnage data from the DIFRA members between mid-2008 and Spring 2009 and at no other time.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the terms “counseled” and “oversaw” as vague and ambiguous. Complaint Counsel further objects to this Request for failing to set forth each matter for which an admission is requested separately, as required by Rule 3.32(a), by seeking at least three separate admissions of fact. Complaint Counsel also objects to this Request as irrelevant and not likely to lead to the discovery of admissible evidence because Respondent has not asserted an advice of counsel defense. Subject to the General Objections and Specific Objections, Complaint Counsel denies this Request, except as follows:

a) Complaint Counsel admits that the third-party accounting firm, SHRW, gathered, aggregated, and disseminated DIWF shipment tonnage data for at least the time period of mid-2008 through to the end of 2008;

b) Complaint Counsel denies that antitrust counsel attended and oversaw all communications and meetings of the DIFRA members; and

c) Complaint Counsel, after a reasonable inquiry, lacks sufficient information to admit or deny the subjects about which DIFRA and its members received counsel.

REQUEST NO. 15: Admit that the DIWF shipment tonnage data gathered by SRHW was aggregated across broad size ranges that mirrored major size groupings of pipe: 3-12," 14-24," and over 24", that there was no geographic breakdown of where the tonnage was sold, and that there was no breakdown of tonnage sold in any of the thousands of different casting diameters, configurations, or finishes, other than joint type.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the term "broad size ranges" as vague and ambiguous. Complaint Counsel further objects to this Request for failing to set forth each matter for which an admission is requested separately, as required by Rule 3.32(a), by seeking at least three separate admissions of fact. Subject to the General and Specific Objections, Complaint Counsel denies this Request, except as follows:

a) Complaint Counsel admits that the DIWF shipment tonnage data gathered by SRHW was aggregated across size ranges that mirrored major size groupings of pipe: 3-12", 14-24", and over 24";

b) Complaint Counsel admits that the aggregated DIWF shipment tonnage data did not report the geographic area to which the tonnage was sold other than specifying that the data was limited to the United States and Puerto Rico; and

c) Complaint Counsel admits that the aggregated DIWF shipment tonnage data did not breakdown tonnage by casting diameters, configurations, or finishes, other than joint type.

REQUEST NO. 16: Admit that the shipment tonnage data gathered by SRHW did not distinguish between Domestic Fittings and Non-domestic Fittings and did not indicate whether the tonnage was sold into Open Preference or Domestic Preference jobs.

RESPONSE: In addition to the General Objections, Complaint Counsel objects to this Request for failing to set forth each matter for which an admission is requested separately, as required by Rule 3.32(a), by seeking at least two separate admissions of fact. Subject to the General and Specific Objections, Complaint Counsel denies this Request, except as follows:

a) Complaint Counsel admits that the shipment tonnage data gathered by SRHW did not distinguish between Domestic Fittings and Non-domestic Fittings; and

b) Complaint Counsel admits that the shipment tonnage data gathered by SRHW did not indicate whether the tonnage was sold into Open Preference or Domestic Preference jobs.

REQUEST NO. 17: Admit that the shipment tonnage data gathered by SRHW was historic; each DIFRA member reported its shipment tonnage several weeks after compiling its monthly sales, the shipment tonnage reflected jobs that were bid months earlier, and SRHW then spent weeks combining the shipment tonnage data provided by each member and subsequently disseminated the aggregated volume data back to the DIFRA members.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the terms “historic,” “several weeks,” “months earlier” and “prices” as vague and ambiguous.

Complaint Counsel further objects to this Request for failing to set forth each matter for which an admission is requested separately, as required by Rule 3.32(a), by seeking at least four admissions of fact. Subject to the General and Specific Objections, Complaint Counsel denies this Request, except as follows:

a) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether each DIFRA member reported its shipment tonnage several weeks after compiling its monthly sales;

b) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether the shipment tonnage reflected jobs that were bid months earlier;

c) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether SRHW then spent weeks combining the shipment tonnage data provided by each member; and

d) Complaint Counsel admits that, subsequent to DIFRA members reporting their shipment tonnage to DIFRA, SRHW disseminated aggregated volume data to the DIFRA members.

REQUEST NO. 18: Admit that the aggregated shipment tonnage data reported by DIFRA could not be used to determine a DIWF manufacturer's or supplier's DIWF prices.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the terms “determine” and “prices” as vague and ambiguous. Subject to the General and Specific Objections, Complaint Counsel admits that the aggregated tonnage data reported by DIFRA did not specify a DIWF manufacturer's or DIWF supplier's prices, but denies that the aggregated shipment tonnage data reported by DIFRA could not be used by Respondent or others to ascertain information about a DIWF manufacturer's or supplier's DIWF prices.

REQUEST NO. 19: Admit that there is no evidence that McWane directly communicated its prices to any other DIWF manufacturer or supplier in advance of communicating them to its customers or potential customers.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the terms “directly communicated,” “prices” and “in advance of” as vague and ambiguous. Subject to the General and Specific Objections, Complaint Counsel, after a reasonable inquiry, lacks sufficient information to admit or deny this Request.

REQUEST NO. 20: Admit that there is no evidence that any other DIWF manufacturer or supplier learned of McWane's prices in advance of McWane informing its customers.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the terms “in advance of” and “prices” as vague and ambiguous. Subject to the General and Specific Objections, Complaint Counsel, after a reasonable inquiry, lacks sufficient information to admit or deny this Request.

REQUEST NO. 21: Admit that there is no evidence that the conduct under or terms of the MDA will recur or become effective again or that McWane and Sigma will enter into any such supplier-purchaser agreement at any point in the future.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the terms “conduct under” and “become effective” as vague and ambiguous. Subject to the General and Specific Objections, Complaint Counsel denies this Request.

REQUEST NO. 22: Admit that McWane did not, as a result of McWane’s Domestic Rebate Policy or otherwise, sell DIWF to purchasers at prices that were below the average variable costs or average marginal costs of producing them.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the terms “average variable costs” and “average marginal costs” as vague and ambiguous. Complaint Counsel further objects to this Request as irrelevant and not likely to lead to the discovery of admissible evidence because Complaint Counsel does not claim that Respondent engaged in predatory pricing. Subject to the General and Specific Objections, Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny this Request.

REQUEST NO. 23: Admit that McWane did not artificially decrease its output of any DIWF products.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the term “artificially decrease” as vague and ambiguous. Subject to the General and Specific Objections, Complaint Counsel denies this Request.

REQUEST NO. 24: Admit that in June 2009 – four months after ARRA was enacted – Star announced at an AWWA industry conference in San Diego that it would begin selling fittings made by a number of unidentified third-party foundries in the United States, and that by September 2009, Star had issued a price list containing at least 4,500 Domestic Fittings and 4,500 Non-domestic Fittings, that it has publicly stated in its September 2010 Newsletter, published on its web site, that “We are very proud of what we have been able to achieve in such a short period, and we could not have done it without the support and backing of our

customer partners. We are committed to manufacture both domestically and globally for the Waterworks Industry for a long time to come,” and that Star has offered for sale and actually sold Domestic Fittings.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to this Request for failing to set forth each matter for which an admission is requested separately, as required by Rule 3.32(a), by seeking at least four separate admissions of fact. Subject to the General and Specific Objections, Complaint Counsel denies this Request, except as follows:

a) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether Star announced in June 2009 at an AWWA industry conference in San Diego that it would begin selling fittings made by a number of unidentified third-party foundries in the United States;

b) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether by September 2009, Star had issued a price list containing at least 4,500 Domestic Fittings and 4,500 Non-domestic Fittings;

c) Complaint Counsel admits that a demonstrative used by Counsel for Respondent McWane at the February 13, 2012 Hearing in this matter, which Counsel for Respondent identified as a screen shot from Star’s website, states “We are very proud of what we have been able to achieve in such a short period. And we could have not done it without the support and backing of our customer partners. We are committed to manufacture both domestically and globally for the Waterworks Industry for a long time to come;” and

d) Complaint Counsel admits that Star has offered for sale and actually sold Domestic Fittings.

REQUEST NO. 25: Admit that Star has more Domestic Fittings SKUs, a larger sales force, and a greater number of product depots than McWane.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to this Request for failing to set forth each matter for which an admission is requested separately, as required by Rule 3.32(a), by seeking at least three separate admissions of fact. Subject to the General and Specific Objection, Complaint Counsel denies this Request, except as follows:

- a) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether Star has more Domestic Fittings SKUs than McWane;
- b) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether Star has a larger sales force than McWane; and
- c) Complaint Counsel, after reasonable inquiry, lacks sufficient information to admit or deny whether Star has a greater number of product depots than McWane.

REQUEST NO. 26: Admit that there are more than 100 waterworks distributors in the United States that purchased few or no Domestic Fittings from McWane between September 2009 and September 2010.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the term “few” as vague and ambiguous. Complaint Counsel further objects to this Request because Respondent has exceeded its allotted number of requests for admission, including all subparts, as specified in Paragraph 10 of the February 15, 2012, Scheduling Order, and therefore denies this Request in its entirety.

REQUEST NO. 27: Admit that McWane’s average price for DIWF products in the second half of 2008 was flat or declining despite a significant increase in scrap prices in the first six months of 2008.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the terms “average price” and “significant increase” as vague and ambiguous. Complaint Counsel further objects to this Request because Respondent has exceeded its allotted number of

requests for admission, including all subparts, as specified in Paragraph 10 of the February 15, 2012, Scheduling Order, and therefore denies this Request in its entirety.

REQUEST NO. 28: Admit that McWane's average price for DIWF products sold into Open Preference jobs declined throughout 2008 and in August 2010 was approximately 27% below McWane's January 2008 price.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the term “average price” as vague and ambiguous. Complaint Counsel further objects to this Request as premature to the extent it seeks information that relates to issues that may be the subject of expert testimony in this case. Complaint Counsel also objects to this Request for failing to set forth each matter of which an admission is requested separately, as required by Rule 3.32(a), by seeking at least two separate admissions of fact. Complaint Counsel further objects to this Request because Respondent has exceeded its allotted number of requests for admission, including all subparts, as specified in Paragraph 10 of the February 15, 2012, Scheduling Order, and therefore denies this Request in its entirety.

REQUEST NO. 29: Admit that the passage of ARRA appears to have had no, or only a de minimis, effect on the demand for fittings.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the terms “appears,” “de minimis” and “demand for fittings” as vague and ambiguous. Complaint Counsel further objects to this Request because Respondent has exceeded its allotted number of requests for admission, including all subparts, as specified in Paragraph 10 of the February 15, 2012, Scheduling Order, and therefore denies this Request in its entirety.

REQUEST NO. 30: Admit that fittings suppliers sell DIWF to distributors, pipe manufacturers, pipe fabricators, contractors, and municipalities.

RESPONSE: In addition to the General Objections, Complaint Counsel specifically objects to the term “pipe fabricators” as vague and ambiguous. Complaint Counsel further objects to this Request because Respondent has exceeded its allotted number of requests for admission, including all subparts, as specified in Paragraph 10 of the February 15, 2012, Scheduling Order, and therefore denies this Request in its entirety.

I state under penalty of perjury that the above Complaint Counsel’s Objections and Responses to Respondent McWane’s First Set of Admissions was prepared and assembled under my supervision, and that the information contained herein is, to the best of my knowledge, true and correct.

Dated: February 28, 2012

Respectfully submitted,

s/ Thomas H. Brock
Edward Hassi, Esq.
Geoffrey M. Green, Esq.
Linda Holleran, Esq.
Thomas H. Brock, Esq.
Michael J. Bloom, Esq.
Jeanine K. Balbach, Esq.
J. Alexander Ansaldo, Esq.
Andrew K. Mann, Esq.
Monica M. Castillo, Esq.

Counsel Supporting the Complaint
Bureau of Competition
Federal Trade Commission
Washington, DC 20580
Telephone: (202) 326-2470
Facsimile: (202) 326-3496
Electronic Mail: ehassi@ftc.gov

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2012, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I also certify that I delivered via electronic mail and hand delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

Joseph A. Ostoyich
Andreas Stargard
William C. Lavery
Baker Botts L.L.P.
The Warner
1299 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 639-7700
joseph.ostoyich@bakerbotts.com
andreas.stargard@bakerbotts.com
william.lavery@bakerbotts.com

J. Alan Truitt
Thomas W. Thagard III
Maynard Cooper and Gale PC
1901 Sixth Avenue North
2400 Regions Harbert Plaza
Birmingham, AL 35203
(205) 254-1000
atruitt@maynardcooper.com
tthagard@maynardcooper.com

Counsel for Respondent McWane, Inc.

Gregory S.C. Huffman
William Katz
Nicole Williams
Brian Stoltz
Thompson and Knight LLP
One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, TX 75201
(214) 969-1700
Gregory.Huffman@tklaw.com
William.Katz@tklaw.com
Nicole.Williams@tklaw.com
Brian.Stoltz@tklaw.com

Counsel for Respondent Star Pipe Products, Ltd.

February 28, 2012

By: s/ Thomas H. Brock
Thomas H. Brock
Attorney